

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36034

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 341
	)	
Plaintiff-Respondent,	)	Filed: February 3, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
DAVID W. BRUMMETT,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Thomas J. Ryan, District Judge.

Judgment of conviction and unified sentence of seven years, with a minimum period of confinement of three years, for possession of a controlled substance, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before GUTIERREZ, Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

David W. Brummett pled guilty to possession of a controlled substance. I.C. § 37-2732(c)(1). In exchange for his guilty plea, an allegation that Brummett was a persistent violator was dismissed. The district court sentenced Brummett to a unified term of seven years, with a minimum period of confinement of three years, to run concurrent with an unrelated sentence. Brummett filed an I.C.R 35 motion, which the district court denied. Brummett appeals.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State*

*v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Brummett's Rule 35 motion. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Brummett's Rule 35 motion also requested that the district court order a substance abuse evaluation pursuant to I.C. § 37-2738. Brummett argues that the district court's denial of that motion was an abuse of discretion. At sentencing, the district court had a presentence investigation report (PSI) that had been prepared within the previous twelve months. Idaho Code Section 37-2738 permits the court, in its discretion, to waive the requirement of a substance abuse evaluation "if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or similar assessment which has evaluated the defendant's need for substance abuse treatment conducted within twelve (12) months preceding the date of the defendant's sentencing." The PSI relied upon by the district court adequately evaluated Brummett's need for substance abuse treatment. Brummett has failed to show that the district court abused its decision to sentence Brummett without a substance abuse evaluation.

Therefore, Brummett's judgment of conviction and sentence, and the district court's order denying Brummett's Rule 35 motion, are affirmed.